

**International Brotherhood of Electrical Workers,  
Local Union No. 66, AFL-CIO (Houston Light-  
ing and Power Company) and Dennis M.  
Gerow. Case 23-CB-2373**

June 29, 1982

**DECISION AND ORDER**

**BY CHAIRMAN VAN DE WATER AND  
MEMBERS JENKINS AND ZIMMERMAN**

On August 27, 1980, Administrative Law Judge William L. Schmidt issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed limited exceptions and a brief in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge as modified herein.

For the reasons set forth below we find, as the complaint alleges, that, by unlawfully refusing, since December 20, 1979, to allow Dennis M. Gerow to resign from union membership and to revoke his outstanding union dues-checkoff authorization, Respondent has violated Section 8(b)(1)(A) of the Act; and that by thereafter failing to advise Houston Lighting and Power Company (HLP), Gerow's employer, of Gerow's resignation of membership and revocation of checkoff authorization, thereby causing or attempting to cause HLP to continue to deduct union dues from Gerow's pay in violation of Section 8(a)(3) of the Act, Respondent additionally violated Section 8(b)(1)(A) and (2) of the Act.

Gerow, an apprentice instrument tester for HLP at its W. R. Paris plant in Thompson, Texas, became a member of Respondent on January 3, 1979. At the same time Gerow executed a dues-checkoff agreement which authorizes HLP to each month deduct the regular monthly union dues from his pay and in pertinent part provides:

I reserve the right to revoke this authorization during the two-week period preceding the next anniversary date of this agreement. The

authorization shall renew itself thereafter, from year to year, subject each year to revocation during the two week period preceding the anniversary date.

Thereafter, dues were regularly deducted from Gerow's pay.

The collective-bargaining agreement between Respondent and HLP contains a dues-checkoff clause which provides at article I, section 4, paragraph C:

The Company shall not be required to change the amount of Union dues deducted until receipt of an authorization signed by an employee authorizing such change. Any change in the amount of dues deducted shall be effective as of the month following receipt of such authorization.

In practice, each month Respondent forwards to HLP a recapitulation sheet showing the individual changes to be made under the dues-checkoff system. HLP's payroll department normally requires Respondent to submit such information 10 working days in advance of payday in order for such changes to be reflected in the employee's next paycheck. While there was testimony that an outstanding dues authorization can be revoked only by the timely submission of a properly executed "Union Dues Cancellation Notice"<sup>2</sup> provided by Respondent, neither the checkoff authorization form nor the collective-bargaining agreement between Respondent and HLP makes any reference to such a form being required to effectively revoke an outstanding dues authorization.

Respondent's constitution and bylaws contain no restrictions against resignation by members. Likewise, the collective-bargaining agreement between Respondent and HLP contains no form of a union-security agreement requiring the payment of dues or other financial obligations to Respondent.

On May 18, 1979, Gerow, convinced that Respondent was not pursuing a grievance filed by himself and other similarly situated employees,<sup>3</sup> sent a letter to Respondent stating that he wanted to discontinue his membership in the Union. E. H. Sledge, Respondent's business manager, sent Gerow a reply letter dated May 22, 1979, stating:

<sup>1</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>2</sup> The "Union Dues Deduction Cancellation Notice" form is preprinted and assembled in triplicate. The original is supplied to HLP, Respondent retains a copy, and one is provided to the canceling member. The form notifies HLP to cease deduction of regular monthly dues from the revoking employee's paycheck, commencing the month following its submission.

<sup>3</sup> The grievance concerned the ratio of apprentices to journeymen in the instrument tester classification at HLP's Paris facility.

We are in receipt of your note saying you would like to discontinue your membership with this Local Union immediately.

When you made application for membership into this organization you signed a "union dues deduction authorization" giving authority to the HLP Co. to deduct your dues from your check commencing with the month following submission thereof to the HLP Co. by the IBEW Local Union 66. It further states that you have the right to revoke this authorization during the two-week period preceding the next anniversary date of this agreement. Please note this authorization is signed and dated by you on January 3, 1979, therefore your next anniversary date to revoke this authorization will be the two-week period preceding January 3, 1980.

Gerow did nothing further until December 18, 1979, when he prepared a second letter expressing his disappointment in Respondent's handling of the above-mentioned grievance. The letter concluded with:

I would like to stay with the Union to see how it will present itself in our new contract, but according to your letter, I would have to keep my membership until my next anniversary date. I have not seen enough action to warrant my remaining in the Union; therefore, I would like to discontinue my membership.

Gerow followed this letter with a phone call to Respondent's office on December 20, 1979. He was advised by Mildred F. Sneed, an office employee and agent of Respondent, that in order to be dropped from the Union's membership rolls as Gerow had requested he would have to appear at Respondent's office and sign a revocation form. To avoid having to drive a substantial distance to Respondent's office, Gerow requested that the form be mailed to him. Sneed explained that if Gerow desired to avoid having dues deducted for the month of January 1980 Respondent had to forward its materials concerning such matters to the HLP payroll department the following day. Sneed advised Gerow that Respondent's office would be open that night until 8:30 p.m. because of a membership meeting. Gerow finally told Sneed he would inform the HLP payroll department himself. Sneed indicated that the HLP payroll department would not stop deducting Gerow's dues until they received a cancellation notice from Respondent's office.

That evening, Gerow drove to Respondent's office, but arrived after 8:30 p.m. and found no one

in the office. However, after the membership meeting had ended, Gerow found Assistant Business Manager Henry Granowski in the office and asked how he could go about getting out of the Union. Granowski asked Gerow why everyone wanted to get out of the Union, and then indicated that the office was closed, that it was too late for Gerow to accomplish his purpose that evening, that he (Granowski) was not going to get the form that Gerow had to sign before his upcoming anniversary date, and that Gerow could "get the hell out of the office."

On December 21, 1979, Gerow called the HLP payroll department, but was advised that that office would not stop his dues deduction without receiving something on Respondent's letterhead.

Also on December 21, 1979, Gerow called Respondent's office and was connected with Granowski. After Gerow identified himself as being the individual who had talked to Granowski the evening before about getting out of the Union, Granowski accused Gerow of cursing and shouting at Respondent's clerical staff and of hanging up the phone. Granowski's angry response ended the conversation.

On January 2, 1980, Gerow telephoned Respondent's office and was again connected with Granowski. After Gerow explained his business, Granowski told Gerow that he did not give "a damn" about him. Gerow indicated the feeling was mutual, but repeated that all he wanted to know was how to get out of the Union. At that point Granowski told Gerow to "go to hell."

On January 3, 1980, Gerow made another call to Respondent's office and spoke to Naomi Calvin, an office employee and agent of Respondent. Gerow explained that he was trying to get out of the Union, but that no one was cooperating with him. After ascertaining his identity, Calvin pulled Gerow's file and reviewed it. When she returned to the telephone, she explained to Gerow that it was too late for him to cancel his membership and that he would have to wait until 2 weeks before the next anniversary date of his dues-deduction authorization. Calvin's contemporaneous memorandum of the remainder of the conversation reads as follows:

He said he had called Payroll and they told him they could not cancel dues deduction until they received word from us.

I reminded him of our correspondence to him, dated May 22, 1979 outlining procedure for cancellation; of telephone conversation with Mrs. Sneed of December 20, 1979, wherein he was told to come in that date and sign cancel-

lation as that was the deadline for sending changes to HLEP for January activity.

He stated he had come in the night of the Union meeting and requested Henry Granowski to give him a cancellation notice for signature. Henry told him the girls were all gone home and the business office was closed and the meeting already in progress; that he could not furnish him with the papers.

Gerow insisted that he wanted to withdraw from the Union and I explained to him again that he had already passed his deadline and that his next chance for signing cancellation would be two weeks prior to January 3, 1981.

He was very agitated; wanted to know if this was our "final decision" and I told him we had no choice but to abide by the rules. He then said, "Well, I just wanted to make sure before I go elsewhere for help, because I do not feel the Union has helped me any in my grievance and I no longer want to belong."

On January 2, 1980, Business Manager Sledge was advised of Gerow's phone calls and was provided with Sneed's memorandum of her December 20, 1979, conversation with Gerow. Sledge did not, however, put Gerow's name on the recapitulation sheet to HLP to stop his dues deduction and was not willing to do so after January 2 because, in essence, the period for revoking his checkoff authorization had expired. As a consequence, at the time of the hearing Respondent continued to carry Gerow on its membership rolls and dues continued to be deducted from Gerow's wages.

The Administrative Law Judge found that Respondent violated Section 8(b)(1)(A) and (2) of the Act by its May 22, 1979, refusal to recognize Gerow's effective resignation from the Union. However, the complaint does not allege, nor did the General Counsel argue, that Respondent's failure to give effect to Gerow's resignation in May 1979, more than 6 months prior to the filing of the charges herein, constitutes a violation of the Act. Accordingly, unlike the Administrative Law Judge, we shall rely on the events surrounding Gerow's May effort to resign from the Union only as background to the complaint allegation that Respondent unlawfully failed and refused to give effect to Gerow's December 1979 efforts to resign from the Union and to revoke his outstanding checkoff authorization.

We note at the outset that while an effective membership resignation does not automatically revoke an outstanding checkoff authorization<sup>4</sup> the

facts here establish that, during the course of the communications between Gerow and Respondent, neither distinguished between the concept of membership resignation and revocation of checkoff authorization. To the contrary, in both written and verbal exchanges between Gerow and various agents of Respondent, terms meaning resignation and revocation were used interchangeably as if the one included the other or were one and the same in effect. Thus, Gerow's first communication with Respondent seeking discontinuation of membership was met with Business Manager Sledge's written reply suggesting that to resign Gerow would have to revoke his checkoff authorization during the 2-week escape period preceding his January 3 anniversary date. That Gerow and Respondent thereafter equated resignation and revocation to be synonymous is apparent from Gerow's December 18, 1979, letter to Respondent stating that he would like to discontinue his membership before his next anniversary date; Sneed's advising Gerow in response to his request on December 20, 1979, to have his name dropped from Respondent's membership rolls of the timing and procedure for canceling his checkoff authorization; and Granowski's, Calvin's, and Sledge's subsequent statements to Gerow, phrased so as to make it clear that Respondent in effect deemed revocation of his dues-checkoff authorization to be a requisite to, if not the same as, resignation from the Union. Indeed, Calvin explained to Gerow that it was too late for him to cancel his membership because he had failed to sign a dues-deduction cancellation notice during the 2-week escape period. Finally, Respondent has continued to carry Gerow on its membership rolls despite his explicit request to resign. From the foregoing it is apparent, and we find, that what Gerow was seeking and what Respondent understood him to want was one and the same—cessation of any and all affiliation with Respondent, including membership therein and financial contributions thereto. We further find that Respondent was unwilling to consider Gerow's request for resignation unless he first succeeded in revoking his checkoff authorization.

As to whether Gerow effectively resigned from the Union, it is well settled that, where neither a

restrictive of resignation, would find that an effective resignation automatically cancels a dues-checkoff provision. Cf. *N.L.R.B. v. Granite State Joint Board, Textile Workers Union of America, Local 1029* [International Paper Box Machine Co.], 409 U.S. 213, fn. 5 (1972).

Since a dues-checkoff authorization is a contract between an employer and an employee, Member Zimmerman would find that a resignation from union membership in no way operates, of itself, as a cancellation of checkoff authorization, merely because of the absence of contractual, constitutional, or bylaw restrictions on resignation. He notes, however, that this issue is not presented here.

<sup>4</sup> Chairman Van de Water, in view of the fact that there was neither a contract provision nor any union restrictions in its constitution or bylaws

union's constitution nor bylaws provides specific restraints on resignation, a member may resign from the union at will so long as the desire to resign is clearly communicated.<sup>5</sup> Further, such communication may be made in any feasible way and no particular form or method is required.<sup>6</sup> Here, there were no impediments to Gerow's resignation and Gerow communicated through Respondent's various agents a clear intention to sever all ties with the Union. He did so in writing, over the telephone, and in person. We conclude therefore that he effectively resigned from the Union. Accordingly, we find that Respondent violated Section 8(b)(1)(A) of the Act by refusing to accept or give effect to Gerow's resignation on December 20, 1979, and at all material times thereafter.<sup>7</sup>

The remaining question is whether Gerow's efforts to eliminate all affiliation with the Union were sufficient to revoke his outstanding checkoff authorization. We find that they were. As noted above, the only reference to revocation made on the authorization card signed by Gerow on January 3, 1979, was notice of his right to "revoke this authorization during the two-week period preceding the next anniversary date of this agreement." By announcing his desire to get out of the Union and seeking the "Union Dues Cancellation Notice" form to sign on December 20, 1979, and several subsequent dates within the escape period, Gerow conveyed directly to Respondent his intention to revoke his outstanding checkoff authorization. Further, Respondent was aware of the fact that Gerow had requested HLP's payroll department to stop his dues deduction. That Gerow never actually signed a "Union Dues Cancellation Notice" does not, as Respondent suggests, render his revocation effort ineffective. The authorization card signed by Gerow made no mention of a cancellation form or any other particular method of communication being necessary to effectuate revocation. In fact, the only precondition for cancellation which can be construed from the checkoff authorization is that the authorizing employee clearly communicate his desire to revoke to Respondent. As we found above, Gerow satisfied this requirement.<sup>8</sup> But even if Respondent had established execution of a dues cancellation form as a condition precedent to effective

revocation, it is apparent from this record that Respondent repeatedly frustrated Gerow's attempts to take whatever steps were necessary for revocation under Respondent's professed procedures. On at least three occasions Assistant Business Manager Granowski rebuffed Gerow's requests for assistance in discontinuing his affiliation with the Union and twice Respondent denied Gerow's specific request for a copy of the cancellation form.

Accordingly, we find that on December 20, 1979, Gerow effectively revoked his outstanding checkoff authorization. We therefore find that by refusing to give effect to Gerow's valid revocation by notifying HLP thereof, and by continuing to accept dues deducted from Gerow's wages by HLP, Respondent violated Section 8(b)(1)(A) and (2) of the Act.

#### AMENDED CONCLUSIONS OF LAW

Substitute the following for the Administrative Law Judge's Conclusions of Law 5 and 6:

"5. By refusing to acknowledge the effectiveness of employee Dennis M. Gerow's resignation of membership since on or about December 20, 1979, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

"6. By refusing to acknowledge employee Dennis M. Gerow's December 20, 1979, valid revocation of his outstanding checkoff authorization and by thereafter failing to notify Houston Lighting and Power Company, his employer, of said revocation, thereby causing said Company to deduct regular monthly dues from Gerow's pay in violation of Section 8(a)(3) of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act."

#### ORDER<sup>9</sup>

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, International Brotherhood of Electrical Workers, Local Union No. 66, AFL-CIO, Houston, Texas, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Refusing to acknowledge the effectiveness of Dennis M. Gerow's resignation from membership in Respondent.

(b) Refusing to acknowledge Dennis M. Gerow's valid revocation of his outstanding checkoff au-

<sup>5</sup> *N.L.R.B. v. Granite State Joint Board, Textile Workers Union of America, Local 1029* [International Paper Box Machine Co.], 409 U.S. 213 (1972).

<sup>6</sup> *Local 340, International Brotherhood of Operative Potters, AFL-CIO, and International Brotherhood of Operative Potters, AFL-CIO (Macomb Pottery Company)*, 175 NLRB 756, 760, fn. 4 (1969).

<sup>7</sup> *Sales, Service and Allied Workers' Union, Local No. 80, affiliated with Distillery, Rectifying, Wine & Allied Workers International Union of America, AFL-CIO-CLC (Capitol-Husting Company, Inc.)*, 235 NLRB 1264 (1978).

<sup>8</sup> See *Cameron Iron Works, Inc.*, 235 NLRB 287 (1978).

<sup>9</sup> We find that it would be inappropriate in the circumstances of this case to provide Gerow with copies of the attached notice for distribution among his fellow employees at HLP and do not, therefore, adopt that portion of the Administrative Law Judge's recommended remedy which so provides.

thorization and failing to notify Houston Lighting and Power Company that Gerow owes Respondent no financial obligation cognizable under the checkoff provisions of Respondent's collective-bargaining agreement with that Company.

(c) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Notify Dennis M. Gerow and Houston Lighting and Power Company, in writing, that Gerow has effectively revoked his outstanding checkoff authorization and no longer owes a financial obligation to Respondent which is cognizable under the checkoff provisions of Respondent's collective-bargaining agreement with that Company.

(b) Make Dennis M. Gerow whole for the losses he has suffered as the result of retaining moneys remitted to Respondent on or after December 20, 1979, by Houston Lighting and Power Company pursuant to the checkoff provisions of Respondent's collective-bargaining agreement with that Company in the manner specified in the section of the Administrative Law Judge's Decision entitled "The Remedy."

(c) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."<sup>10</sup> Copies of said notice, on forms provided by the Regional Director for Region 23, after being duly signed by Respondent's business manager, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Deliver to the Regional Director for Region 23 signed copies of said notice in sufficient number to be posted by Houston Lighting and Power Company, if willing, in places at its W. R. Paris facility where notices to employees are customarily posted.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records and reports necessary to analyze the amount of reimbursement due Dennis M. Gerow under the terms of this Order.

(f) Notify the Regional Director for Region 23, in writing, within 20 days from the date of this

Order, what steps Respondent has taken to comply herewith.

## APPENDIX

### NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to acknowledge the effectiveness of Dennis M. Gerow's resignation from membership in our labor organization.

WE WILL NOT refuse to acknowledge Dennis M. Gerow's valid revocation of his outstanding checkoff authorization and WE WILL NOT fail to notify Houston Lighting and Power Company that Dennis M. Gerow has effectively revoked his authorization and owes us no financial obligation cognizable under the checkoff provisions of our collective-bargaining agreement with that Company.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL notify Houston Lighting and Power Company that Dennis M. Gerow is no longer a member of our labor organization and no longer owes a financial obligation to us which is cognizable under the checkoff provisions of our collective-bargaining agreement with that Company.

WE WILL make Dennis M. Gerow whole for all moneys tendered to us by Houston Lighting and Power Company on behalf of Dennis M. Gerow, on and after December 20, 1979, pursuant to the checkoff provisions of our collective-bargaining agreement with that Company, with interest.

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL  
UNION No. 66, AFL-CIO

## DECISION

### STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge: This matter was heard by me on May 13, 1980, in Houston, Texas, pursuant to a complaint issued on behalf of the General Counsel by the Regional Director for

<sup>10</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Region 23 on February 5, 1980, and an answer thereto filed on February 16, 1980, by International Brotherhood of Electrical Workers, Local Union No. 66, AFL-CIO (the Respondent). The complaint is based on a charge alleging that the Respondent violated Section 8(b)(1)(A) of the Act filed by Dennis M. Gerow, an individual, on January 9, 1980. The charge was subsequently amended by Gerow on January 31, 1980, to allege that the Respondent had violated Section 8(b)(1)(A) and (2) of the Act.

The essence of the complaint is that the Respondent violated the Act by refusing to acknowledge Gerow's resignation from membership in the Respondent and to permit him to revoke a dues-checkoff agreement whereby Gerow's employer, Houston Lighting and Power Company (HLP), is authorized to deduct certain moneys from Gerow's wages in favor of the Respondent. The Respondent denied that it engaged in the alleged unlawful conduct and also denied certain preliminary agency allegations in the complaint.

All parties were represented at the hearing, were afforded full opportunity to be heard, and were permitted to present any relevant evidence. Upon a review of the entire record herein, including my observation of the demeanor of the witnesses, and after carefully considering the briefs which have been filed by the Respondent and the General Counsel, I make the following:

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent represents approximately 3,500 employees of HLP, including Gerow, for purposes of collective bargaining. HLP, a Texas corporation, which maintains its principal office and place of business in Houston, Texas, and other plants and offices in other locales in the State of Texas, has been engaged in business at the times material hereto as a public utility generating, transmitting, and selling electrical power. During the 12-month period prior to the issuance of the complaint, HLP purchased goods and materials valued in excess of \$50,000 and caused the same to be shipped to its facilities in the State of Texas directly from suppliers located outside the State of Texas. HLP is now, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Based on the foregoing, I find that it would effectuate the purposes of the Act to assert jurisdiction herein.

##### II. THE LABOR ORGANIZATION

The Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE CONTENTIONS

Very simply, the General Counsel contends that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by refusing to acknowledge Gerow's December 1979 resignation from membership in the Respondent and by refusing to permit Gerow to timely revoke his dues-deduction authorization. As a consequence, HLP has

continued to deduct dues from Gerow's wages after December 1979.

The Respondent asserts that it received an ambiguous letter from Gerow in December 1979 pertaining to his dissatisfaction with the Union; but, as Gerow failed to timely follow the established procedure for the revocation of his dues authorization, it should not be held liable for the continued deduction of his dues. In its answer, the Respondent also denied the agency status of its staff members. After the hearing opened, the Respondent stipulated that its business manager, E. H. Sledge, was an agent but it declined to stipulate that the remaining employees named in the complaint were its agents.

#### IV. THE EVIDENCE

##### A. Preliminary Matters

Geographically, the Respondent is a farflung local union, which includes approximately 77 counties in southeastern Texas. E. H. Sledge, the Respondent's business manager, is in charge of the Respondent's business affairs. He is assisted by Assistant Business Managers Henry Granowski and William Yates. In general, Sledge has assigned Granowski to work on matters which are related to the Respondent's representation of the HLP employees and Yates is assigned to work on matters involving employees who are employed by persons other than HLP.<sup>1</sup> Both Yates and Granowski are full-time employees of the Respondent who are paid on a salary basis. Granowski is assigned to assist members employed by HLP with their work-related problems. He is furnished an automobile and an expense account in connection with those duties. Among other things, Granowski investigates and attempts to favorably resolve employee grievances in the early stages of the contractual grievance procedure. In Sledge's absence, Granowski has performed some of Sledge's normal functions such as giving the business manager's report at the Respondent's membership meetings. Other evidence shows that, at least at certain times, Granowski is responsible for taking control of important documents of the Respondent and providing for their security. In sum, the evidence is overwhelming that Granowski is an agent of the Respondent and an agent within the meaning of Section 2(13) of the Act, and I so find.<sup>2</sup>

In addition to the aforementioned individuals, the Respondent employs three other individuals whose principal duties are to perform the secretarial and administrative office functions of the Respondent. The General Counsel alleges that two of these individuals, Mildred F. Sneed and Naomi Calvin, are agents of the Respondent. Sneed and Calvin are full-time employees of the Respondent with long tenure. They regularly answer the telephones, handle routine inquiries, prepare reports, type correspondence, maintain files, and, in general, perform the usual clerical functions ordinarily present in a typical business office. None of the evidence indicates that any

<sup>1</sup> Approximately 75 percent of the Respondent's membership is employed by HLP.

<sup>2</sup> Yates was not involved in this dispute and was not named in the complaint.

of their activities in connection with the dispute involved here was outside the general scope of their authority. On the basis of the foregoing, and the entire record, I find in accord with the allegation in the complaint that Calvin and Sneed are also agents of the Respondent and agents within the meaning of Section 2(13) of the Act.

Gerow is employed at the W. A. Paris plant of HLP in Thompson, Texas, and lives in Stafford, Texas. He is employed as an apprentice instrument tester. On January 3, 1979, Gerow became a member of the Respondent. At the same time, he executed a dues-checkoff agreement which provides as follows:

#### UNION DUES DEDUCTION AUTHORIZATION

Name [name of employee]

To: Houston Lighting & Power Company:

I hereby authorize the Houston Lighting & Power Company, my employer, to deduct from my first pay check of each month the regular monthly union dues of my present classification or any future classification to which I may be assigned, for such month, and to pay such amount to the Financial Secretary of the International Brotherhood of Electrical Workers, Local Union No. 66. This authorization shall be effective commencing with the month following submission hereof to the Houston Lighting & Power Company by the International Brotherhood of Electrical Workers, Local No. 66. I reserve the right to revoke this authorization during the two-week period preceding the next anniversary date of this agreement. The authorization shall renew itself thereafter, from year to year, subject each year to revocation during the two-week period preceding the anniversary date. Upon official notice from the Financial Secretary of IBEW Local Union No. 66, the Company will change the amount of deductions to comply with IBEW Local Union No. 66 Bylaws.

/s/ Dennis M. Gerow

Dated Jan 3, 79

Classification Appr. Instr. Tester—1

Amount of present monthly Dues 8.64

Thereafter, dues in the amount of \$8.64 were deducted from Gerow's pay until the month of December when his dues deduction was increased to \$10.53 per month. Monthly dues deduction in this later amount were still being made from Gerow's wages at the time of the hearing.

The collective-bargaining agreement between the Respondent and HLP contains the following dues-checkoff agreement between the parties at article I, section 4:

#### ARTICLE I

\* \* \* \* \*

#### Section 4.

a. Upon receipt of an authorization signed by an employee, the Company will deduct from the first pay check of each month the regular Union dues for the current month. Payment shall be made on or before the 5th day of the following month to the Financial Secretary of the Union. The authorization for deduction shall comply with both State and Federal laws.

b. Union agrees to indemnify and save harmless the Company against any and all claims, demands, suits and other forms of liability that may or shall arise out of or by reason of action taken or not taken by Company in reliance upon the authorization submitted to Company.

c. The Company shall not be required to change the amount of Union dues deducted until receipt of an authorization signed by an employee authorizing such change. Any change in the amount of dues deducted shall be effective as of the month following receipt of such authorization.

d. Union agrees to furnish Company with a list specifying the amount of the regular Union dues for each classification of employee and to advise Company of any changes or modifications therein.

Each month the Respondent forwards to HLP a recapitulation sheet showing the individual changes to be made under the dues-checkoff system. In addition to showing the names of the individuals to be added or deleted from HLP's checkoff records, this sheet also shows the names of individuals who have switched into or out of the Respondent's pension plan as this likewise affects the amounts which are checked off. Sneed testified that HLP furnished the Respondent with a list of deadlines showing the dates by which information must be submitted to HLP's payroll department in order for changes under the checkoff system to be reflected in the employee's next paycheck. Sneed, who handles this portion of the Respondent's administrative business, testified that HLP's payroll department normally requires the Respondent to submit information relative to the checkoff system 10 working days in advance of payday in order for such changes to be reflected in the employee's next paycheck.

Sledge testified that any individual who follows the proper procedure is permitted to revoke an outstanding dues-checkoff authorization if it is done at the proper time. However, the action must be initiated by the individual through the Respondent. Thus, Sledge was questioned and testified as follows:

Q. Other than Mr. Gerow, has anyone gone outside the procedure for revoking the dues authorization in the manner that he did and subsequently complained about the Union's action?

A. Not to my knowledge, complaining. Going outside—there had been a few that called the Power Company, and they got mad or one thing and another, and they said, "Stop my dues."

And the Power Company had standard procedures and would answer, "You have got a procedure. Contact the Union."

And that's the way it is handled.

As translated by the Respondent, the proper procedure means that the member must timely submit a properly executed "Union Dues Cancellation Notice" provided by the Respondent.<sup>3</sup> Thereafter, the individual name is included on the aforementioned recapitulation sheet which the Respondent submits to the HLP payroll department. Sledge testified that this procedure is spelled out in the collective-bargaining agreement and the "Union Dues Deduction Authorization" form.<sup>4</sup>

The constitution and bylaws of the Respondent contain no restrictions against resignation by members. Likewise, the collective-bargaining agreement between the Respondent and HLP contains no form of a union-security arrangement requiring the payment of dues or other financial obligations to the Respondent.

#### *B. Gerow's Resignation and Revocation Efforts*

By May 1979, Gerow had become convinced that the Respondent was not pursuing a grievance filed by himself and others similarly situated concerning the ratio of apprentices to journeymen in his classification at the Paris facility. Accordingly, Gerow sent the Respondent a letter dated May 18, 1979, wherein he stated that he wanted to discontinue his membership in the Respondent. Sledge responded to Gerow by letter dated May 22. The body of Sledge's letter stated as follows:

We are in receipt of your note saying you would like to discontinue your membership with this Local Union immediately.

When you made application for membership into this organization you signed a "union dues deduction authorization" giving authority to the HL&P Co. to deduct your dues from your check commencing with the month following submission thereof to the HL&P Co. by the IBEW Local Union 66. It further states that you have the right to revoke this authorization during the two-week

<sup>3</sup> The "Union Dues Deduction Cancellation Notice" form is preprinted and assembled in triplicate. The original is supplied to HLP, the Respondent retains a copy, and one copy is provided to the canceling member. The form provides, in relevant part, as follows:

#### UNION DUES DEDUCTION CANCELLATION NOTICE

TO: Houston Lighting & Power Company:

I, [name of employee], hereby notify the Houston Lighting & Power Company, my employer, to cease deduction from my first pay check of each month the regular monthly union dues of my present classification. This authorization shall be effective commencing with the month following submission hereof to the Houston Lighting & Power Company.

Sledge testified twice—once in response to questions propounded by myself and again in response to questions propounded by the General Counsel—that use of the form was required. Subsequently, in response to questions asked by Respondent's counsel, Sledge testified that an unambiguous written statement would satisfy the requirement. In view of the circumstances present in this case, I do not credit this latter assertion by Sledge.

<sup>4</sup> Contrary to Sledge's assertion, I find the collective-bargaining agreement and the form dues-checkoff authorization are silent with respect to the revocation procedure other than specifying the period for a timely revocation.

period preceding the next anniversary date of this agreement. Please note this authorization is signed and dated by you on January 3, 1979, therefore your next anniversary date to revoke this authorization will be the two-week period preceding January 3, 1980.

Enclosed for your records is xerox copy of authorization submitted to this office when you made application for membership into this Local Union.

Gerow did nothing further until December 18, 1979, when he prepared a second letter which his fiancée, Elizabeth, typed and mailed the following day. In this letter, Gerow expressed his disappointment over the Respondent's handling of the grievance concerning apprentices and concluded the letter with the following:

I would like to stay with the Union to see how it will present itself on our new contract, but according to your letter, I would have to keep my membership until my next anniversary date. I have not seen enough action to warrant my remaining in the Union; therefore, I would like to discontinue my membership.

On December 20, Gerow called the Respondent's office in order to follow up on his letter mailed the day before. His call was taken by Sneed.<sup>5</sup> At this time, Sneed advised Gerow that, in order for him to accomplish his goal of severing his ties with the Respondent, it would be necessary for him to appear at the Respondent's office and sign a revocation form. Rather than attempting to drive the extended distance which would be required by Sneed's instruction, Gerow asked that Sneed mail the form to him. Sneed explained that there was not enough time to do that if he desired to avoid having dues deducted for the month of January 1980, because the Respondent had to forward its materials concerning such matters to the HLP payroll department the following day.<sup>6</sup> Sneed advised Gerow the Respondent's office was open that night until 8:30 p.m. because it was a membership meeting night.<sup>7</sup> Gerow finally told Sneed that he

<sup>5</sup> Except where otherwise noted, the account of the conversation is based on a composite of the testimony of Gerow and Sneed as well as Sneed's contemporaneous memorandum of this conversation which is in evidence.

<sup>6</sup> This statement by Sneed is based on the requirement by HLP's payroll department that it receive information relative to checkoff changes at least 10 working days in advance of payday. In Gerow's instance, the first payday a revocation at that time would have prevented a deduction from his wages was January 4, 1980. Hence, in order for the Respondent to submit a timely change notice to the payroll department by mail on a working day, the notice had to be mailed on December 21, 1979. Under this administrative scheme, it appears that Gerow could not have prevented a deduction for dues for the month of January 1980, if the anniversary date of his dues-deduction authorization had been January 5, 1980.

<sup>7</sup> Much was made of the fact that Gerow testified that Sneed told him that he could come to the office between 8 and 11 that night. However, I am satisfied that this was a mere mistaken impression that Gerow derived from Sneed's advice that that particular evening was a meeting night and Gerow's impression that the meetings normally ended at or about 11 p.m. According to Sledge, the office remains open on the evening of membership meetings until 8:30 in order to permit members to transact business. I

*Continued*

would inform the HLP payroll department himself and take care of the matter in that fashion. Sneed replied that the HLP payroll department would not stop the dues deduction until they received a cancellation notice from the Respondent's office. That concluded the conversation.

That evening Gerow drove to the Respondent's office, but he admittedly arrived after 8:30 and there was no one in the office at that time. However, following the end of the membership meeting, Gerow encountered Granowski in the office putting away the Respondent's minutes. When Gerow asked Granowski how he could go about getting out of the Union, Granowski asked Gerow why everyone wanted to get out. Gerow expressed his view that he did not feel the Union was supporting the employees. Granowski responded to that by telling Gerow that he did not know what he was talking about, that the office was closed, and that it was too late for him to accomplish his purpose that evening. As the two men started to depart, Gerow explained that it was 2 weeks before his anniversary date and he needed to sign the required form. Granowski told Gerow that he was not going to get a form for him to sign and that Gerow could get the "hell" out of there.<sup>8</sup>

The following day Gerow called the HLP payroll department but was advised by the unknown individual with whom he talked that that office would not stop his dues deduction without receiving something on the Respondent's letterhead.<sup>9</sup>

In addition, Gerow also called the Respondent's office again on December 21 and was connected with Granowski. After Gerow identified himself as being the individual who had talked to Granowski the evening before about getting out of the Union, Granowski accused Gerow of cursing and shouting at the Respondent's clerical staff and of hanging up the phone. Granowski's angry response ended the conversation.

I am satisfied that Sneed's account as to what she told Gerow about the time the office would be open is the more reliable version where, as here, there is no evidence Gerow was told to contact anyone else. This suggests the likelihood that Sneed advised Gerow of the hours she would be present. Moreover, because the time for the end of the meetings is, in fact, not fixed, it would not be possible for Sneed to predict when that would occur.

<sup>8</sup> The account of this conversation and the other conversations between Gerow and Granowski is based on the credited testimony of Gerow. In my judgment, the disjointed testimony of Granowski is not worthy of belief. In addition to Gerow's appearance on the witness stand as a more truthful witness, Granowski's acknowledged reason for not giving Gerow a dues revocation form was that he feared the clerical staff would file a grievance against him for doing their work. I find this excuse in the circumstances present here to be patently untruthful and indicative of Granowski's propensity to fabricate explanations for his obdurate conduct toward Gerow.

<sup>9</sup> The Respondent objected to the receipt of Gerow's testimony about what the individual from HLP's payroll department told him as hearsay. Upon the General Counsel's assertion that the testimony was being offered to explain Gerow's subsequent actions and not for the truth of the matter asserted by the out-of-court declarant, I received the testimony over the Respondent's objections. However, on a careful review of the evidence in this case, the statement by the out-of-court declarant in this instance comports with the testimony of both Sneed and Sledge, to wit, that, if Gerow contacted HLP directly, he would be told that he had to proceed through the Respondent. Having considered the objected-to testimony in light of these circumstances, I am satisfied that its substance has been effectively adopted by the Respondent within the meaning of Rule 801(d)(2)(B) of the Federal Rules of Evidence and, therefore, is not hearsay by definition. See also McCormick, § 246.

On January 2, Gerow telephoned the Respondent's office and was again connected with Granowski.<sup>10</sup> After Gerow explained his business, Granowski told Gerow that he did not give a damn about him. Gerow expressed a mutual admiration for Granowski but repeated that all he wanted to know was how to get out of the Union. At the point Granowski told Gerow to go to hell. Gerow asked Granowski to repeat what he had said for a fellow worker and handed the telephone to a companion, but Granowski told Gerow's companion that his statements to Gerow were none of his business.

On January 3, Gerow made another call to the Respondent's office and spoke to Naomi Calvin. Gerow explained that he was trying to get out of the Union but no one was cooperating with him. After ascertaining his identity, Calvin pulled Gerow's file and reviewed it. When she returned to the telephone, she explained to Gerow that it was too late for him to cancel his membership and that he would have to wait until 2 weeks before the next anniversary date of his dues-deduction authorization. Calvin's contemporaneous memorandum of the remainder of this conversation reads as follows:

He said he had called Payroll and they told him they could not cancel dues deduction until they received word from us.

I reminded him of our correspondence to him, dated May 22, 1979, outlining procedure for cancellation; of telephone conversation with Mrs. Sneed of December 20, 1979, wherein he was told to come in that date and sign cancellation as that was the deadline for sending changes to HL&P for January activity.

He stated he had come in the night of the Union meeting and requested Henry Granowski to give him a cancellation notice for signature. Henry told him the girls were all gone home and the business office was closed and the meeting already in progress; that he could not furnish him with the papers.

Gerow insisted that he wanted to withdraw from the Union and I explained to him again that he had already passed his deadline and that his next chance for signing cancellation would be two weeks prior to January 3, 1981.

He was very agitated; wanted to know if this was our "final decision" and I told him we had no choice but to abide by the rules. He then said, "Well, I just wanted to make sure before I go elsewhere for help, because I do not feel the Union has helped me any in my grievance and I no longer want to belong."

Sledge was absent from the Respondent's office during the period from December 17, 1979, until January 2, 1980. Upon his return, Sneed, who was aware of Gerow's contacts with Granowski, advised Sledge of Gerow's calls and provided him with her memorandum

<sup>10</sup> Gerow's inactivity with respect to the membership matter between December 21, 1979, and January 2, 1980, appears to be explained by the fact that he was preoccupied with another matter; namely, marrying Elizabeth.

of the December 20, 1979, telephone conversation. Sledge testified that he did not feel it was necessary to take any action because Gerow had told Sneed that he was going to take care of the matter himself. Nevertheless, Sledge also testified that he knew that Gerow's letter of December 18, 1979, would not have been regarded as sufficient to satisfy HLP to stop Gerow's dues deduction and that he knew that Gerow would be told that he had to follow the procedure of going through the Respondent's office. Sledge also testified that he could not tell from Gerow's December 18, 1979, letter whether or not he actually wanted out of the Union.<sup>11</sup> Accordingly, Sledge did not put Gerow's name on the recapitulation sheet to HLP in order to stop his dues deduction and was not willing to do so after January 2 because, in essence, the period for revoking dues checkoff had expired. As a consequence, at the time of the hearing the Respondent continued to carry Gerow on its membership rolls and dues continued to be deducted from Gerow's wages.

### C. Concluding Findings

The General Counsel's complaint seeks an unfair labor practice finding based on the Respondent's refusal to recognize Gerow's resignation from membership in December 1979, and its refusal to allow Gerow to revoke his dues checkoff. If the evidence in this case related solely to the Respondent's conduct in December, I would agree with the General Counsel's conclusions. However, I am satisfied on the basis of the evidence presented here that Gerow effectively resigned his membership in May 1979, and that the Respondent's unlawful conduct with respect to Gerow occurred long before the time alleged by the General Counsel.<sup>12</sup>

The controlling legal principles in cases of this nature are succinctly summarized by the Board in *Sales, Service, and Allied Workers' Union, Local No. 80, affiliated with Distillery, Rectifying, Wine & Allied Workers International Union of America, AFL-CIO-CLC (Capitol-Husting Company, Inc.)*, 235 NLRB 1264, 1265 (1978). There the Board observed the following:

Where neither a union's constitution or bylaws provides specific restraints on resignation, a union member may resign at will whether or not the resignation occurs in midterm of the contract and irrespective of the wording of the contractual union-security provisions. An employee may communicate his resignation from membership in any feasible way

and no particular former method is required so long as he clearly indicates that he no longer wishes to remain a member.

These principles are grounded upon the Supreme Court's interpretation of the nature of the relationship which exists between a union and its individual members. See, e.g., *Booster Lodge 405 International Association of Machinists and Aerospace Workers [The Boeing Company] v. N.L.R.B.*, 412 U.S. 84 (1973); *N.L.R.B. v. Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO [International Paper Box Machine Co.]*, 409 U.S. 213 (1972); *Scofield, et al. v. N.L.R.B.*, 394 U.S. 423 (1969).

Applying the foregoing principles to the facts herein, I have concluded that Gerow clearly conveyed his unmistakable intention to terminate his membership in the Respondent by his May 18, 1979, letter to the Respondent. That it was recognized as such by the Respondent is clearly evidenced by the first sentence of Sledge's letter of May 22, 1979, to Gerow. There are no restrictions against resignation in the Respondent's constitution and bylaws. Likewise, there is no membership provision or agreement of any kind which binds former members of the Respondent who are employed by HLP to any financial obligation toward the Respondent beyond the term of their membership.<sup>13</sup> Hence, when Gerow submitted his May 10, 1979, resignation it was subject only to the financial obligations then "due and owing." *N.L.R.B. v. Granite State Joint Board*, *supra*.

The text of Sledge's May 1979 letter to Gerow was intended to convey the impression to Gerow that, by executing the dues-deduction authorization which was not revocable until the 2-week period prior to its January 3, 1980, anniversary date, Gerow had somehow obliged himself to remain a member and pay dues for that period of time. In the *Granite State* case, the Supreme Court specifically rejected the reading of a checkoff authorization with a limited revocation period as a limitation upon a union member's right to resign at will in the absence of evidence that the member was aware of such a practice or consented to such a limitation on the right to resign. Neither the checkoff provisions in the applicable collective-bargaining agreement nor the terms of the checkoff authorization which Gerow executed give the slightest hint that such a result is intended. Similarly, there is no other evidence of any kind that the Respondent had such a practice which was known to its members in general or to Gerow in particular. Hence, there is no evidence that by signing a checkoff authorization Gerow effectively waived the right he had to resign at will.<sup>14</sup>

<sup>11</sup> Although Sneed initially testified that she too was confused by Gerow's December 18, 1979, letter, she subsequently testified that she had no doubt that Gerow wanted out of the Union.

<sup>12</sup> In so concluding, I am satisfied that the facts and circumstances surrounding Gerow's operative resignation in May 1979 were fully litigated. Indeed, one of the Respondent's arguments herein is grounded to a substantial degree on the advice its business manager, Sledge, gave to Gerow at that time. Although this conclusion makes it unnecessary to analyze extensively the matters pertaining to Gerow's efforts to resign in December 1979, the extensive findings of fact and credibility resolutions with respect thereto were deemed necessary for review purposes. Moreover, Gerow's effort to resign in December 1979 reinforces the conclusion that his May 1979 resignation effort resulted from an irreconcilable difference with the Respondent and was, in fact, a genuine effort to terminate his relationship with the Respondent.

<sup>13</sup> Presumably as a consequence of the Texas right-to-work law, the collective-bargaining agreement involved here has no type of union-security provision.

<sup>14</sup> The fact that Gerow believed the erroneous implication in Sledge's May 22, 1979, letter that he was somehow bound either legally or financially to the Respondent does not warrant, in my view, any different conclusion. The Respondent cannot be excused from its unlawful conduct merely because Gerow may have been misled by the Respondent's erroneous advice where, as here, it appears even the General Counsel has been similarly misled. Viewed in its proper context here, the checkoff authorization executed by Gerow is nothing more than the written assign-

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Having concluded that Gerow had effectively resigned his membership in the Respondent on or about May 22, 1979, and had no financial obligation to the Respondent thereafter, I find that by its continued failure to acknowledge Gerow's resignation, and by its continued retention of moneys submitted to it by HLP to satisfy a dues obligation Gerow did not owe, the Respondent has violated Section 8(b)(1)(A) of the Act. Contrary to the contention in the Respondent's brief that it had no duty to take any action in the circumstances of this case, I find that the Respondent did have a duty under Section 8(b)(2) of the Act to advise HLP that Gerow was no longer a member and owed it no moneys other than those which accrued prior to May 22, 1979.<sup>15</sup> By failing to do so, the Respondent was causing or attempting to cause HLP to discriminate against Gerow in a manner prohibited by Section 8(a)(3) of the Act. *Sales, Service and Allied Workers Union, Local 80, etc., supra.*

By concluding as I have that Gerow tendered an effective resignation to the Respondent in May 1979 and that the Respondent's unlawful conduct began to occur subsequent to that date rather than December 20, 1979, as alleged in the complaint, the limitations period contained in Section 10(b) of the Act becomes a consideration. In general, Section 10(b) of the Act by its literal terms precludes the issuance of a complaint with respect to conduct which occurs more than 6 months prior to the filing of a charge but in reality that section is considered to be a statute of limitations which also precludes an unfair labor practice finding with respect to conduct occurring more than 6 months prior to the filing of a charge. As noted above, the initial charge was filed on January 9, 1980. The substance of the initial charge and the amended charge filed on January 31, 1980, was essentially the same. The amended charge appears to be designed to allege that the Respondent's conduct violated Section 8(b)(2) of the Act as well as Section 8(b)(1)(A)—the only section of the Act alleged to have been violated in the original charge. As such, I find that the variance between the initial charge and the amended charge is not sufficient to compel the use of the later date in the computation of the limitations period.

Under the foregoing circumstances, my findings and conclusions with respect to the Respondent's unlawful conduct are limited to the Respondent's conduct occurring on or after July 9, 1979. Although it is true that the Respondent's initial refusal to give effect to Gerow's May 1979 resignation was obviously communicated to Gerow in Sledge's letter of May 22, 1979, I am satisfied that the problem posed by this circumstance is not distinguishable from a similar problem found in *Norfolk, Ports-*

*mouth Wholesale Beer Distributors Association, et al.*, 196 NLRB 1150 (1972). There the Board held that the dismissal of a charge against an employer for allegedly repudiating the checkoff provisions of a collective-bargaining agreement and failing to remit monthly dues to the appropriate labor organization was not required even though the initial repudiation occurred more than 6 months prior to the filing of the charge as the employer's monthly failure to deduct dues and duly remit the same was a separate event which occurred anew each month right up to the time of the hearing. Accordingly, it was concluded that the Board would not be precluded from finding the conduct which occurred in the 6-month period prior to the filing of the charge to be violative of the Act. See also the remedial relief applied in the instance of employee Fuentes in *Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, AFL-CIO; and its Local 1905 (Yellow Cab Company of Tampa, Inc.)*, 205 NLRB 890 (1973).

Here, the Respondent was presented with the opportunity each month to advise HLP that Gerow was no longer a member and, therefore, owed no dues on the recapitulation sheet which serves as the Respondent's means of notifying HLP of the changes the Respondent desires under the checkoff system. Nevertheless, the Respondent chose not to do so. As a consequence of the Respondent's failure to give HLP such notice, HLP has remitted each month to the Respondent money which it withheld from Gerow's wages in order to satisfy Gerow's dues obligation which ceased effective with his resignation in May 1979. Notwithstanding the fact that Gerow had no obligation to make payments of any kind to the Respondent after May 22, 1979, the Respondent continued to retain the monthly payment it received from HLP on behalf of Gerow right up to the time of the hearing. Accordingly, I find that by engaging in the foregoing conduct on and after July 9, 1979, the Respondent violated Section 8(b)(1)(A) and (2) of the Act.

#### V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section IV, above, occurring in connection with the operations of the Respondent and Houston Lighting and Power Company described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### CONCLUSIONS OF LAW

1. Houston Lighting and Power Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. By virtue of Section 9(a) of the Act the Respondent has been at all times material herein the exclusive representative of certain of Houston Lighting and Power Company's employees, including Dennis M. Gerow, in

ment required under Sec. 302(c)(4) of the Act to avoid the otherwise general prohibition in Sec. 302 against payments by an employer to a labor organization which represents the employer's employees.

<sup>15</sup> The elementary principles of equity dictate that the Respondent had a duty to act to avoid unjust enrichment at Gerow's expense once Gerow ceased having a financial obligation to the Respondent. Although the Board's decision in *Shen-Mar Food Products, Inc.*, 221 NLRB 1329 (1976), would suggest that HLP may not have been privileged to unilaterally discontinue remitting dues for Gerow to the Respondent, the Respondent was clearly not privileged to retain any money Gerow did not owe and did not desire to pay to the Respondent. There is nothing to prohibit the Respondent and HLP from mutually agreeing to drop an employee from the checkoff system.

an appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

4. At no time has the Respondent maintained any provision in its constitution and bylaws which limits the right of a member of the Respondent to resign from membership in the Respondent at will.

5. By failing and refusing at all times since July 9, 1979, to acknowledge that Dennis M. Gerow was no longer a member of the Respondent, and by retaining moneys tendered to it by Houston Lighting and Power Company on or after July 9, 1979, on behalf of Dennis M. Gerow pursuant to the checkoff provisions of the Respondent's collective-bargaining agreement with Houston Lighting and Power Company, the Respondent has engaged in, and is continuing to engage in, an unfair labor practice within the meaning of Section 8(b)(1)(A) of the Act.

6. By failing and refusing at all times since July 9, 1979, to notify Houston Lighting and Power Company that Dennis M. Gerow was no longer a member of the Respondent and owed no financial obligation to the Respondent, the Respondent has engaged in, and is continuing to engage in, an unfair labor practice within the meaning of Section 8(b)(2) of the Act.

7. The unfair labor practices specified in paragraphs 5 and 6, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having concluded that the Respondent has engaged in certain unfair labor practices, it is recommended that it be ordered to cease and desist therefrom and take certain other affirmative action designed to effectuate the policies of the Act. With respect thereto, it is recommended that the Respondent be ordered to notify Houston Lighting and Power Company that Dennis M. Gerow is no longer a member of the Respondent and owes no finan-

cial obligation to the Respondent cognizable under the checkoff provisions of the Respondent's collective-bargaining agreement with that Company. It is further recommended that the Respondent be ordered to remove Dennis M. Gerow's name from its membership rolls and to give appropriate notice of such action to its parent body and any other intermediate body with which the Respondent is affiliated in the same manner as it normally notifies such organizations. Additionally, it is recommended that the Respondent be ordered to make Dennis M. Gerow whole for any moneys tendered to it on or after July 9, 1979, by Houston Lighting and Power Company on behalf of Dennis M. Gerow pursuant to the checkoff provisions of the Respondent's collective-bargaining agreement with that Company together with interest thereon in accord with the manner specified in *Florida Steel Corporation*, 231 NLRB 651 (1977). Finally, it is recommended that the Respondent be ordered to post the notice attached hereto as the appendix and provide signed copies of said notice for posting at the W. R. Paris facility or distribution by Gerow and to notify the Regional Director of all action it has taken to remedy the unfair labor practices which have occurred in this matter.<sup>16</sup>

[Recommended Order omitted from publication.]

<sup>16</sup> Inasmuch as Houston Lighting and Power Company was not named as a respondent or a party in interest in this proceeding, it cannot be compelled to post the notice at the W. R. Paris facility where Gerow's is employed and knowledge of this dispute is likely to be well known among employees. In view of this circumstance, and as the Respondent's office and meeting hall is a considerable distance from that facility, I deem it appropriate that provision be made for Gerow to be provided with signed copies of the notice to distribute among his fellow employees if Houston Lighting and Power Company is unwilling to post the notice voluntarily. Otherwise, it is likely that the essential purpose of the notice will not be accomplished. Nothing herein is intended to privilege any distribution at places or during times not otherwise protected by the Act.